

Texas Register

TITLE 34	PUBLIC FINANCE
PART 1	COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 9	PROPERTY TAX ADMINISTRATION
SUBCHAPTER D	APPRAISAL REVIEW BOARD
RULE §9.804	Arbitration of Appraisal Review Board Determinations
ISSUE	09/20/2013
ACTION	Final/Adopted

Preamble

Texas Admin
Code Rule

(a) Definitions and instructions. The following words and terms, when used in this subchapter, shall have the following meanings and are subject to the stated instructions and provisions.

(1) Owner--A person or entity having legal title to property. It does not include lessees who have the right to protest property valuations before county appraisal review boards.

(2) Agent--An individual for whom written authorization has been granted in accordance with the terms of this subsection and includes the following: an attorney licensed by the State of Texas; a real estate broker or salesperson licensed under Occupations Code, Chapter 1101; a real estate appraiser licensed or certified under Occupations Code, Chapter 1103; an appraisal district employee registered under Occupations Code, Chapter 1151, or an appraisal district contractor; a property tax consultant registered under Occupations Code, Chapter 1152; or a certified public accountant certified under Occupations Code, Chapter 901. An agent, other than an attorney, may not take any action relating to binding arbitration on behalf of an owner without a completed authorization form prescribed by the comptroller. The authorization form must be signed by the owner and specify the actions that the agent is authorized to take on behalf of the owner with respect to binding arbitration. Authorized actions that must be identified on the form include whether or not the agent has the authority to sign the request for binding arbitration, whether or not the agent has the authority to receive deposit refunds, and whether or not the agent has the authority to represent the owner in the arbitration proceeding. The authorization must identify as an agent a specific individual and identify the agent's license or certificate number and applicable licensing board pertaining to the license or certificate under which the agent is qualified to represent the owner pursuant to Tax Code, §41A.08. An authorization identifying a business entity is not valid; identification of an individual meeting the qualifications of Tax Code, §41A.08 is required. If an owner authorizes an agent to receive deposit refunds, the authorization must include the agent's social security number, federal tax identification number, or Texas state tax identification number. If the owner has no agent, all correspondence from the comptroller regarding the arbitration will be sent to the owner. If the owner has authorized an agent to receive deposit refunds as provided in this section, all correspondence from the comptroller regarding the arbitration will be sent to the authorized agent. In order for an agent to represent an appraisal district, other than an attorney or an employee of the appraisal district, a written statement signed by the chief appraiser authorizing the agent to represent the district in the arbitration proceedings shall be submitted in writing to the property owner and the arbitrator at or before the time of the arbitration proceeding.

(3) Binding arbitration--A forum in which each party to a dispute presents the position of the party before an impartial third party who is appointed by the comptroller as provided by Tax Code, Chapter 41A, and who renders a specific award that is enforceable in law and may only be appealed as provided by Civil Practices and Remedies Code, §171.088, for purposes of vacating an award.

(4) Appraised value--Has the meaning included in Tax Code, §1.04(8).

(5) Market value--Has the meaning included in Tax Code, §1.04(7).

(6) Appraisal district--Has the meaning included in Tax Code, §6.01.

(7) Comptroller--The Comptroller of Public Accounts of the State of Texas.

(b) Request for Arbitration.

(1) The appraisal review board of an appraisal district shall include a notice of the owner's right to binding arbitration and a copy of the request for binding arbitration form prescribed by the comptroller with the notice of issuance and the order determining a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property if the value determined by the order is \$1 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13.

(2) An owner may appeal through binding arbitration an appraisal review board order determining a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property if the value determined by the order is \$1 million or less or if the property qualifies as the owner's residence homestead under Tax Code, §11.13. A motion for correction of an appraisal roll, a protest concerning the qualification of property for exemption or special appraisal, or any other issue not specified in Tax Code, §41.41(a)(1) or (2) cannot be appealed through binding arbitration.

(3) A request for binding arbitration must be made on the form prescribed by the comptroller and signed by an owner or agent. If an agent files a request for binding arbitration, a written authorization signed by the owner as described in this section that specifically authorizes the agent to file the request must be attached to the request for binding arbitration. Failure to attach a complete authorization disqualifies the agent from requesting the arbitration. The request for binding arbitration form must be filed with the appraisal district responsible for appraising the property not later than the 45th calendar day after the date the owner receives the order determining protest from the appraisal review board as evidenced by certified mail receipt. A deposit in the amount provided by Tax Code, §41A.03 in the form of a money order or a check issued and guaranteed by a banking institution, such as a cashier's or teller's check, payable to the Comptroller of Public Accounts must accompany the request for binding arbitration. Personal check, cash, or other form of payment shall not be accepted. The request for binding arbitration with the required deposit and, if applicable, the agent authorization form must be timely submitted to the appraisal district by hand delivery, by certified first-class mail, or as provided by Tax Code, §1.08 or Tax Code, §1.085.

(4) The appraisal district shall reject a request for binding arbitration if the owner or agent fails to attach the required deposit in the manner required by this section. In such event, the appraisal district shall return the request for binding arbitration with a notification of the rejection to the owner or agent by regular first-class mail or other form of delivery requested in writing by the owner or agent.

(5) The chief appraiser of the appraisal district must submit requests for binding arbitration with the required deposits to the comptroller not later than the 10th calendar day after the date the appraisal district receives the requests. The chief appraiser must assign an arbitration number to

each request in accordance with the procedures and forms developed by the comptroller. The chief appraiser must certify receipt of the request and state in the certification whether or not the request was timely filed; the request was made on the form prescribed by the comptroller; the deposit was submitted according to this section; and any other information required by the comptroller. In addition, the chief appraiser must submit to the comptroller with each request a copy of the order determining protest or, in the case of an appeal relating to contiguous properties pursuant to Tax Code, §41A.03, a copy of each order determining protest. The chief appraiser must submit the requests for arbitration to the comptroller by hand delivery or certified first-class mail, and must simultaneously deliver a copy of the submission to the owner by regular first-class mail.

(6) Failure by the owner to timely file the request for arbitration and the required deposit with the appraisal district shall result in the denial of the request by the comptroller. Failure by the owner to pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute before the delinquency date shall result in the denial of the request for arbitration by the comptroller. If the property owner or agent did not file a protest pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the appraisal review board to be valued at \$1 million or less or property that qualifies as the owner's residence homestead under Tax Code, §11.13, the comptroller shall deny the request for binding arbitration. If the property owner or agent filed an appeal in district court concerning the property subject to a request for binding arbitration, the comptroller shall deny the request. Failure by the owner to provide all information required by the comptroller's prescribed form, including but not limited to the signature of the owner or agent and the written authorization of the owner designating an agent, may result in the denial of the request by the comptroller if the information is not provided in a timely manner, not to exceed 10 calendar days, after a written or verbal request by the comptroller to the person requesting arbitration to supplement or complete the form has been made.

(7) On receipt of the request for arbitration, the comptroller shall determine whether to accept the request, deny the request, or request additional information. The comptroller shall notify the owner or agent and appraisal district of the determination. If the comptroller accepts the request, the comptroller shall notify the owner or agent and the appraisal district of the Internet address of the comptroller's website at which the comptroller's registry of arbitrators is maintained and may be accessed. The comptroller shall request in the notice that the parties attempt to select an arbitrator from the registry of arbitrators. The notice shall be delivered electronically, by facsimile transmission, or by regular first-class mail. If requested by the owner or appraisal district, the comptroller shall deliver promptly a copy of the registry of arbitrators in paper form to the owner or the appraisal district by regular first-class mail.

(c) Registry of Arbitrators.

(1) A person seeking to be listed in the comptroller's registry of arbitrators must submit a completed application on a form provided by the comptroller providing all requested information and documentation and affirming that the applicant meets the qualifications set forth in Tax Code, §41A.06. By submitting the application and any documentation required on the prescribed form, the applicant attests that he or she has all of the qualifications required under Tax Code, §41A.06, agrees to conduct an arbitration for a fee that is not more than 90% of the amount of the arbitration deposit, and agrees to promptly notify the comptroller of any change in the applicant's qualifications. The attestation shall remain in effect until the renewal date of the

applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, to be included in the registry. For an arbitrator to continue to be included in the registry, a new application must be submitted on or before the earlier of each renewal date of the applicant's license or certification under which the applicant was qualified, pursuant to Tax Code, §41A.06, or the second anniversary of the date the arbitrator was initially added to or subsequently renewed on the registry.

(2) A person applying for inclusion in the comptroller's registry of arbitrators must agree to conduct arbitration hearings as required by Tax Code, Chapter 41A, and in accordance with the limitations indicated in the application and by this section. The application must state that false statements provided by applicants may result in misdemeanor or felony convictions. The application must also state that the comptroller may remove a person from the registry of arbitrators at any time due to failure to meet statutory qualifications or to comply with requirements of this section, or for good cause as determined by the comptroller.

(3) The comptroller shall deny an application if it is determined that the applicant does not qualify for listing in the arbitration registry or if inclusion of the applicant in the arbitration registry would otherwise not be in the interest of impartial arbitration proceedings. A person is ineligible to be listed as an arbitrator if the person is a member of a board of directors of any appraisal district or an appraisal review board in the state; an employee, contractor, or officer of any appraisal district in the state; a current employee of the comptroller; or a member of a governing body, officer, or employee of any taxing unit in the state.

(4) If the application is approved, the applicant's name and other pertinent information provided in the application and the applicant's professional resume or vitae shall be added to the comptroller's registry of arbitrators. The registry may include the arbitrator's experience and qualifications, the geographic areas in which the arbitrator agrees to serve, and other information useful for property owners and county appraisal district personnel in selecting an arbitrator. The arbitrator may be required to conduct arbitrations regionally in order to be included in the registry.

(5) The comptroller must notify the applicant of the approval or denial of the application or the removal of the arbitrator from the registry as soon as practicable and must provide a brief explanation of the reasons for denial. The applicant may provide a written statement of why the denial should be reconsidered by the comptroller within 30 calendar days of the applicant receiving the denial. The comptroller may approve the application if the applicant provides information to justify the approval. If the application is subsequently approved, the comptroller shall notify the applicant as soon as practicable.

(6) Each person who is listed as an arbitrator in the comptroller's registry must report to the comptroller in writing any material change in the information provided in the application within 30 calendar days of the change. A material change includes, but is not limited to a change in address, telephone number, e-mail address, website, loss of required licensure, incapacity, or other condition that would prevent the person from professionally performing arbitration duties. Failure of the arbitrator to report a material change may result in the immediate removal of the arbitrator from the current registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this paragraph shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in the registry.

(7) Owners, agents, and appraisal districts are responsible for verifying the accuracy of the information provided in the arbitrator registry in attempting to agree on an arbitrator. If the

information is found to be inaccurate by the owners, agents, or appraisal districts, such fact must be communicated to the comptroller as soon as practicable in order that the registry may be corrected. Inclusion of an arbitrator in the comptroller's registry is not and shall not be construed as a representation by the comptroller that all information provided is true and correct and shall not be construed or represented as a professional endorsement of the arbitrator's qualifications to conduct arbitration proceedings.

(8)The registry shall be maintained on the comptroller's Internet website or in non-electronic form and will be updated within 30 calendar days of the date that arbitrator applications are approved or updated and processed by the comptroller.

(d)Appointment of Arbitrators.

(1)The appraisal district shall notify the comptroller not later than the 20th calendar day after the date the parties receive a copy of the registry or the notice of the comptroller's Internet address of the registry website, whichever is later, that an arbitrator was selected by the parties by agreement or that an agreement could not be reached.

(2)The comptroller shall promptly appoint an arbitrator selected by agreement of the owner or agent and the appraisal district. The notification of the appointment must be transmitted by regular first-class mail to the arbitrator. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(3)If an appraisal district notifies the comptroller that the owner or agent and the appraisal district have been unable to agree to an arbitrator, the comptroller shall appoint an arbitrator from the registry within 20 business days from such notification and inform the arbitrator by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(4)If the appraisal district fails to notify the comptroller of the selection of an arbitrator or the failure to agree to an arbitrator timely, the comptroller shall appoint an arbitrator from the registry within 20 business days of the date the comptroller becomes aware of the failure of the appraisal district and owner or agent to comply with the requirements of law. The arbitrator shall be notified of the appointment by the comptroller by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(5)The appointment of an arbitrator by the comptroller shall be made according to preferences included in arbitrator applications geographically and by random selection.

(6)An arbitrator may not accept an appointment and may not continue an arbitration after appointment if the arbitrator has an interest in the outcome of the arbitration or if the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573. The owner or appraisal district may request a substitute arbitrator before the arbitration proceedings begin upon a showing, supported by competent evidence, that the assigned arbitrator has an interest in the outcome of the arbitration or that the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board Cont'd...

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by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573.

(7)The comptroller must be notified, in writing, within 5 business days of the arbitrator's receipt of the appointment that the arbitrator is unable or unwilling to conduct the arbitration because of a conflict of interest described by paragraph (6) of this subsection, or for any other reason; or that the appointment is accepted. The notification must be delivered to the comptroller electronically, by facsimile transmission, or by regular first-class mail. If the comptroller does not receive from the arbitrator written notification of acceptance or refusal of the appointment within 5 business days, the comptroller shall presume that the appointment has been refused. If the arbitrator refuses the appointment, the comptroller shall appoint a substitute arbitrator from the registry within 10 business days of the receipt, or the determination pursuant to this subsection, of the arbitrator's refusal. The process of appointment of arbitrators pursuant to this subsection shall continue in this fashion until an acceptance is obtained. A refusal to accept an arbitration appointment may be considered by the comptroller in evaluating subsequent requests for arbitration and appointments.

(e)Provision of Arbitration Services.

(1)The arbitrator may require written agreements with the appraisal district and the owner concerning provision of arbitration services, including but not limited to the time, place, and manner of conducting and concluding the arbitration. Unless the property owner and the appraisal district both agree to arbitration by submission of written documents, the arbitration will be conducted in person or by teleconference. An arbitrator may require that the arbitration be conducted in person. If the arbitration is conducted in person, the proceeding must be held in the county where the appraisal district office is located and from which the appraisal review board order determining protest was issued, unless the parties agree to another location. The arbitrator must give notice and conduct arbitration proceedings in the manner provided by Civil Practice and Remedies Code, §§171.044, 171.045, 171.046, 171.047, 171.049, 171.050, and 171.051, and shall continue a proceeding if both parties agree to the continuance and may continue a proceeding for reasonable cause. The arbitrator must, by written procedures delivered in advance to the parties, require that the parties produce and exchange evidence prior to the hearing.

(2)The arbitrator shall decide to what extent the arbitration hearing procedures are formal or informal and shall deliver written procedures to be used at the hearing. The parties shall be

allowed to record the proceedings by audiotape, but may record them by videotape only with the consent of the arbitrator.

(3)The parties to an arbitration proceeding may represent themselves or may be represented by an agent as provided by Tax Code, §41A.08 with timely, written authorization as provided in this section. If an agent was not identified in the request for binding arbitration for purposes of representing an owner in the arbitration proceeding, a written authorization from the owner may be presented at the time of the arbitration proceeding in order for the agent to represent the owner at the proceeding. Such written authorization must be made on the comptroller-prescribed agent authorization form, must be signed by the owner, and may provide only for the agent to represent the owner at the arbitration proceeding. Any deposit refund will be processed in accordance with the original request for binding arbitration. No written authorization is required for an attorney to represent a party at an arbitration proceeding.

(4)The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information provided to arbitrators. The information may not be disclosed except as provided by law.

(5)The arbitrator shall not communicate with the owner, the appraisal district, or their agents, nor shall the owner, the appraisal district, or their agents communicate with the arbitrator, prior to the arbitration hearing concerning specific evidence, argument, facts, merits, or the property subject to arbitration. Such communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(6)The arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on the property subject to the appeal are delinquent; that the appraisal review board order(s) appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the order at \$1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of property at issue in the pending arbitration. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), each appraisal review board order appealed must be a determination of a protest filed pursuant to Tax Code, §41.41(a)(1) concerning the appraised or market value of property determined by the order at \$1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; however, the combined total value of all orders appealed may exceed \$1 million, whether or not the appeal involves a property that qualifies as owner's residence homestead. When the arbitration involves contiguous tracts of land pursuant to Tax Code, §41A.03(a-1), the arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on any property subject to the appeal are delinquent; that any of the appraisal review board orders appealed did not determine a protest filed pursuant to Tax Code, §41.41(a)(1) or (2) concerning the appraised or market value of property determined by the order at \$1 million or less or of property that qualifies as the owner's residence homestead under Tax Code, §11.13; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of any property at issue in the pending arbitration.

(7)The arbitrator must complete an arbitration proceeding in a timely manner and will make every effort to complete the proceeding within 120 days from the acceptance of the appointment by the arbitrator. Failure to comply with the timely completion of arbitration proceedings may result in the removal of the arbitrator from the comptroller's registry of arbitrators.

(f) Arbitration Determinations and Awards.

(1) The arbitrator shall determine the appraised or market value of the property that is the subject of the arbitration.

(2) If the arbitrator makes a determination of the appraised value of property to be valued under Tax Code, Chapter 23, Subchapters B, C, D, E, or H, these statutory provisions and the comptroller's rules must be followed in making the appraised value determination.

(3) If the arbitrator makes a determination of the value of a residence homestead that has an appraised value that is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(A) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23, was incorrectly applied and the change correctly applies the formula;

(B) the calculation of the appraised value of the property reflected in the appraisal review board order includes an amount attributable to new improvements and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(C) the arbitrator determines that the market value of the property is less than the appraised value indicated on the appraisal review board order and the change reduces the appraised value to the market value determined by the arbitrator.

(4) Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall make a final determination and award on the form prescribed by the comptroller and signed by the arbitrator. A copy of the determination and award form shall be delivered to the owner or agent and the appraisal district by facsimile transmission or regular first-class mail, as requested by the parties, and to the comptroller by regular first-class mail.

(5) All post-appeal administrative procedures provided by Tax Code, Chapter 42, Subchapter C, shall apply to arbitration awards.

(g) Payment of Arbitrators' Fees and Refund of Property Owner Deposit.

(1) Deposits submitted with requests for arbitration by owners or agents, and submitted by appraisal districts to the comptroller, shall be deposited into individual accounts for each owner and according to assigned arbitration numbers.

(2) The provisions of Government Code, Chapter 2251, shall apply to the payment of arbitrator fees by the comptroller, if applicable, beginning on the date that the comptroller receives a copy of the arbitrator's determination and award by regular first-class mail.

(3) Payment of arbitrators' fees and arbitration deposit refunds will be processed in accordance with the provisions of Tax Code, §41A.09. An award that determines an appraised or market value at an amount exactly one-half of the difference in value between the property owner's opinion of value as stated in the request for binding arbitration and the value determined by the appraisal review board is deemed to be nearer the appraisal review board's determination of value. The comptroller will retain 10% of each deposit for administrative costs.

(4) If an arbitrator dismisses a pending arbitration as provided by subsection (e)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. In such event, the arbitrator must seek payment from the owner or agent for the services rendered prior to the dismissal of the proceeding.

(5) An owner or agent may withdraw a request for arbitration only by written notice delivered to the appraisal district, the comptroller, and the arbitrator, if one has been appointed. If the owner or agent withdraws a request for arbitration in writing 14 or more calendar days before the arbitration proceeding is first scheduled, the comptroller shall refund to the owner or agent the

deposit, less the 10% retained by the comptroller for administrative costs. If the owner or agent withdraws a request for arbitration less than 14 calendar days before the arbitration proceeding is first scheduled, the comptroller shall pay the fee, if any, charged by the arbitrator. The fee will be paid from the owner's deposit and mailed to the address shown on the arbitrator's registry application. If the arbitrator's fee is less than 90% of the owner's deposit, the comptroller shall refund to the owner or agent any remaining deposit, less 10% retained by the comptroller for administrative costs. If the arbitrator's fee is 90% of the owner's deposit, the comptroller shall retain 10% of the deposit for administrative costs and no refund will be paid.

(6) If the comptroller denies a request for arbitration as provided by subsection (b)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs.

(7) A refund to an owner or agent or a payment to an arbitrator is subject to the provisions of Government Code, §403.055. The comptroller's form for request for binding arbitration will require identification of the social security number or tax identification number of the individual authorized to receive deposit refunds. For an owner, the owner is required to provide the owner's social security number, federal tax identification number, or Texas state tax identification number. If an agent has been authorized by the owner to receive deposit refunds, the agent is required to provide the agent's social security number, federal tax identification number, or Texas state tax identification number. Deposit refunds will not be processed without the required identification. The comptroller shall not issue a warrant for payment to a person who is indebted to the state or has a tax delinquency owing to the state until the indebtedness or delinquency has been fully satisfied.

(h) Pending Arbitrations. No party to an arbitration including, but not limited to, a property owner, a property owner's agent, an appraisal district, or an arbitrator, may seek the comptroller's advice or direction on a matter relating to a pending arbitration under Tax Code, Chapter 41A. An arbitration is pending from the date a request for arbitration is filed and continues until delivery of the arbitrator's final award pursuant to Tax Code, §41A.09. The prohibition in this subsection shall not apply to administrative matters assigned to the comptroller, such as processing of arbitration requests and deposits.

(i) Forms Adopted by Reference. The Comptroller of Public Accounts adopts by reference the Request for Binding Arbitration form and the Arbitration Determination and Award form. Copies of these forms can be obtained from the Comptroller of Public Accounts, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

(j) Other Forms. All other comptroller forms applicable to this section may be revised at the discretion of the comptroller. The comptroller may also prescribe additional forms for the administration of binding arbitration. Current forms can be obtained from the Comptroller of Public Accounts' Property Tax Assistance Division.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ashley Harden

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

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